IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No. 359 of 2004

Between:

M.A. Khadeer, S/o. Jalal, Rtd. Driver, E.30995, R/o. 63-3-69,
Jagjeevanramnagar, Kanteshwar Kaman, Nizamabad.

..... PETITIONER.

AND

1. The A.P.S.R.T.C. rep by its Managing Director,
   Musheerabad, Hyderabad.
2. The Depot Manager, A.P.S.R.T.C. Hyderabad-1 Depot,

Hyderabad.

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 2nd respondent herein in passing the Proc.No. P1/693(2)/02-H1, dated 17-3-2003 as illegal, arbitrary and against the principles of natural justice and set aside the same and consequently direct the respondents herein to pay all the retirement benefits that were denied in pursuance of the impugned proceedings.

Counsel for the Petitioner: Mr.T.BHEEMSEN

Counsel for the Respondents : Mr. K.HARINATH,

STANDING COUNSEL FOR APSRTC.

The Court made the following :

ORAL ORDER:

Heard the learned counsel appearing for both the parties.

The petitioner questions the order dated 17-3-2003 of the second respondent, which was made without issuing any notice and without giving any opportunity before passing the said order for the adjustment of settlement dues.

The petitioner retired as driver from the service of the respondent-Corporation on 31-7-2002 on attaining the age of superannuation i.e., 58 years. He is entitled to all the retrial benefits and the second respondent paid last salary, provident fund and other arrears, but final settlement was not made. However, after some time, final settlement was made settling the amount payable to the petitioner at Rs.45,250/-. Instead of paying the said amount, the second respondent passed the said order dated 17-3-2003 stating that there are certain pre-audit incremental arrears amounting to Rs.49,220/- recoverable from the petitioner and, therefore, the said amount of Rs.45,250/- was adjusted and the petitioner was called upon to pay the balance amount of Rs.3,970.05p. Questioning the said order, the writ petition is filed.

Learned counsel for the petitioner submits that after the petitioner retired, the respondents cannot take any action for the so called recovery of the incremental arrears as the said amount is not at all recoverable.

Admittedly, the impugned order was passed without giving any notice or without giving any opportunity to the petitioner. Therefore, I am of the view that as the impugned order has been passed without giving any notice and against the principles of natural justice, the same has to be set aside. If the respondents are entitled to take any action under the relevant Rules and Regulations for the recovery of the so called pre-audit incremental arrears, they are entitled to do so after giving a reasonable opportunity to the petitioner. Accordingly, the order dated 17-3-2003 is

set aside and the respondents are directed to pay the said amount of Rs.45,250/- to the petitioner within a period of two months. If the respondents intend to initiate any action for recovery of the incremental arrears, they may do so in accordance with law, within a period of two months from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No costs.

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4th August 2004. **(V.ESWARAIAH, J.)**

ARS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the Fourth day of August Two Thousand and Four.

To

1. The Managing Director,,A.P.S.R.T.C., Musheerabad, Hyderabad.
2. The Depot Manager, A.P.S.R.T.C. Hyderabad-1 Depot,

Hyderabad.

3. Two C.D. copies.